ORDINANCE NO. 07-106

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE ISSUANCE OF NOT EXCEEDING $2,610,000 CAPITAL IMPROVEMENT REVENUE REFUNDING BONDS OF THE CITY OF HIALEAH, FLORIDA FOR THE PURPOSE OF REFUNDING THE CITY'S CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 1993, WHICH WERE ISSUED TO PAY FOR THE COST OF THE CONSTRUCTION OF THE FIRE ADMINISTRATION BUILDING AND EQUIPMENT FOR THE DISPATCH CENTER AND OTHER FURNISHINGS AND TELEPHONE EQUIPMENT; ACCEPTING THE COMMITMENT OF SUNTRUST BANK ("THE BANK") TO PROVIDE THE FINANCING; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE BANK; AWARDING THE SALE OF THE BONDS TO THE BANK; PROVIDING FOR SECURITY FOR THE BONDS; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AUTHORIZING THE EXPENDITURE FOR BOND ISSUANCE COSTS NOT TO EXCEED $6,500; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Hialeah, Florida ("City"), a municipal corporation, is duly created and existing pursuant to the Florida Constitution and by virtue of the laws of the State of Florida ("State"); and

WHEREAS, the City issued its $4,400,000 Capital Improvement Revenue Bonds, Series 1993 (the "Prior Bonds"), which are currently outstanding in the principal amount of $2,610,000; and

WHEREAS, the Mayor and the City Council (the "Council") finds and declares that the refunding of the Prior Bonds at a reduced interest rate, with the refunding bonds maturing approximately 11 years from the anticipated closing date of December 17, 2007, which approximately coincides with the original maturity date of the Prior Bonds, will produce an estimated savings of $200,000 over the life of the refunding bonds; and

WHEREAS, the Council has determined that it is in the best interest of the City to refund the Prior Bonds in order to realize interest rate savings on the Prior Bonds, and desires to authorize the issuance of a not exceeding $2,610,000 Capital Improvement Revenue Refunding Bonds (the "Bonds") for the purpose of refunding the Prior Bond; and

WHEREAS, the Council desires that the Bonds be secured by a pledge of the revenues from the fire rescue transport fees collected by the City, and, to the extent such revenues are insufficient, by a covenant to budget and appropriate from legally available non-ad valorem revenues of the City; and

WHEREAS, the Council hereby determines it to be in the best interests of the City to proceed with a negotiated sale of the Bond in accordance with the provisions of §218.385, F.S. and therefore to accept a commitment (the "Commitment") from SunTrust Bank ("the Bank"), which is attached as an Exhibit "A" to this Ordinance, to purchase the Bonds in accordance with the additional findings set forth herein; and

WHEREAS, the Council desires to set forth the details of the Bonds and the other provisions of the financing in a Loan Agreement with the Bank (the "Loan Agreement").

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: **Authority.** In accordance with the provisions of the Charter of the City, the Code of Ordinances of the City, and Chapter 166, Florida Statutes, there is hereby authorized to be issued a Capital Improvement Revenue Refunding Bonds (the "Bonds") of the City, in an aggregate principal amount not to exceed $2,610,000, for the purpose of refunding the Prior Bonds. The Bonds shall be designated "City of Hialeah, Florida Capital Improvement Revenue Refunding Bonds, Series 2007". The details of the Bonds and the other provisions of the financing shall be set forth in the Loan Agreement.

Section 2: **Approval of Loan Agreement.** The Council hereby approves the form and content of the Loan Agreement by and among the City and the Bank, presented at this meeting and attached hereto as Exhibit "B". The Mayor is hereby authorized to execute and deliver the Loan Agreement on behalf of the City, and the City Clerk is authorized to place the City's seal thereon and attest thereto, in substantially the form presented at this meeting, with such changes, modifications, deletions and insertions as the Mayor, with the advice of the City Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the City.

Section 3: **Authority of Officers.** The Mayor is hereby authorized to negotiate the final terms of the Bonds and the Loan Agreement, consistent with the terms of the Commitment, and to execute the Bonds, the Loan Agreement and related documents, and to do all other things necessary to accomplish the issuance and sale of the Bonds. The City Clerk is hereby authorized to attest the Mayor's signature. The Mayor, the City Clerk, the City Attorney and the Office of Management and Budget Director are each hereby authorized to execute such documents as are necessary to accomplish the issuance and sale of the Bonds. All action taken to date by the officers of the City in furtherance of the issuance of the Bonds and the obtaining of the Commitment is hereby approved, confirmed and ratified.

Section 4: **Pledge of Security.** The Council hereby authorizes that the Loan Agreement set forth a pledge of the revenues from the fire rescue transport fees collected by the City, and, to the extent such revenues are insufficient, by a covenant to budget and appropriate from legally available non-ad valorem revenues of the City; in order to secure the payment of the Bonds.

Section 5: Negotiated Sale of the Bonds. Based upon the uncertainty of the interest rate environment if sale of the Bonds is delayed, the City hereby determines the necessity for a negotiated sale of the Bonds. Prior to the final award of the Bonds to the Bank, the City will require that it be provided all applicable disclosure information required by Section 218.385, Florida Statutes. The negotiated sale of the Bonds to the Bank is hereby approved at a purchase price of par.

Section 6: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 8: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 9: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this ___ day of ____________________, 2007.

Esteban Bovo
Council President

Attest:

Rafael E. Granado, City Clerk

Approved on this 12 day of December, 2007.

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William Grodnick

William M. Grodnick, City Attorney

s:wmg/legisl/ord-2007/suntrust2.61milliondollarloanrevenuebond.doc

Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".

SunTrust Bank
Mail Code FL-Miami 1042
777 Brickell Ave., 4th Floor
Miami, FL 33131
Tel (305) 579-7014
Fax (305) 579-7133
Delle.joseph@suntrust.com

Delle Joseph, CPA
First Vice President

SunTrust℠

November 1, 2007

Alex Vega, C.P.A., M.S.T.
OMB Director and City Treasurer
City of Hialeah
501 Palm Avenue
Hialeah, Fl 33010

Dear Mr. Vega:

We are very pleased to provide the City of Hialeah with this Proposal for the requested facility. SunTrust Bank (hereinafter referred to as the "Bank") will provide the requested loan subject to the following terms and conditions.

1. **THE BORROWER**: The Borrower shall be the City of Hialeah (hereafter referred to as the "Borrower").

2. **AMOUNT OF THE LOAN**: The loan shall be for an amount not to exceed $2,610,000 and shall be individually evidenced by a promissory note in such amount executed by the Borrower. The loan will be in the form of an amortized Bank Qualified Tax Exempt Term Loan ("the Loan"). Proceeds under the Loan will be used to re-finance the City's Capital Improvement Revenue Bonds, Series 1993 ("the Project").

3. **MATURITY DATE, AMORTIZATION TIME PERIOD, REPAYMENT TERMS**: The Note will mature 11 years from closing date. Quarterly loan payments of interest and principal (as applicable) will be required, the first of which being due on June 15, 2008.

All semi-annual payments shall be due on March 15, June 15, September 15 and December 15th of each year. All payments by the Borrower shall be made by the due date by no later than 2:00 p.m. to the Bank in immediately available funds, free and clear of any defenses, set-offs, counterclaims, or withholdings or deductions for taxes.

4. **INTEREST RATE**: The loan shall bear a Bank Qualified Tax Exempt fixed interest rate of: 4.33% for the term of the Loan with no pre-payment penalty. This rate will be held by the bank through the expected closing date of 12/16/2007.

Interest at the foregoing rate will be computed on the basis of a 360-day year and shall be calculated for the actual number of days elapsed.

5. **COLLATERAL**: The proposed Tax Exempt Loan will be secured by a lien upon revenues derived by rescue transport service fees ("Pledged Revenues"). The City will budget non-ad valorem revenues if such revenue is not adequate to pay debt service costs.

6. **FINANCIAL REPORTING REQUIREMENTS:** The Borrower shall submit audited financial statements and an operating budget for all funds, as ratified by the Mayor and City Commission statements to the Bank not less than annually.

7. **COVENANTS & CONDITION**: Any material change in the property or the financial condition of the Borrower prior to the closing date shall relieve the Bank of all obligations hereunder and thereupon this Proposal shall be of no further force or effect.

Parity debt covenant will be set at 1.50 times for any additional borrowings to be secured by the Pledged Revenues.

Funding of the Note is contingent upon a satisfactorily legal opinion as to the Borrower's tax-exempt status and authority under its Charter to borrow money, as well to the fact that the Note constitutes bank-qualified status. The legal opinion and the authority to borrow money must be acceptable to the Bank in form, manner, tenure and purpose.

8. **DISBURSEMENT**: It is understood and agreed that no Loan funds shall be required or disbursed until all documents and conditions outlined herein have been received and/or approved by the Bank and all terms and conditions in this Proposal have been satisfactorily met.

9. **EXPENSES**: Borrower shall furnish to the Bank, without charge to the Bank, the opinion of Bond Counsel, approving the legality of the loan together with the closing certificates and other applicable documents related to the closing of the transaction.

The Borrower shall be required to pay all reasonable and necessary expenses associated with the contemplated transaction, including but not limited to the Bank's attorney's fee for the review and preparation of all legal documents, which is estimated at $6,500.

10. **INTEREST RATE ADJUSTMENT:** If the Note is issued at a tax exempt rate but later the interest on the Note becomes taxable for any reason, then the Note will bear interest from the earliest effective date as of which interest payable on the Note is includable in the gross income of the Bank at a rate per annum equal to the interest rate on this Note times [1.49] [multiplier if non bank qualified] (the "Taxable Rate"). In addition, the interest rate on this Note shall be adjusted to provide the same after tax yield to the Bank in the event of any change in the maximum corporate tax rate applicable to the Bank from 35% [or any elimination or change in the preference reduction rate of 80% applicable to "bank qualified Notes". The Borrower shall also pay any additions to tax and penalties resulting from the inclusion of the interest on the Note in the gross income of the Bank for federal income tax purposes, and any arrears in interest resulting therefrom. Any such additions to tax, penalties and interest shall be paid by the Borrower on the next succeeding interest payment date.

11. **ARBIRTRAGE REPONSIBLILITY:** The Borrower shall assume whatever responsibility and take whatever action is necessary to assure that the Note will not constitute an "arbitrage Note" under the provision of Section 148 of the Code. Additionally, the Borrower shall covenant to comply with any and all rebate requirements contained in Section 148 of the Code.

12. **INTEREST RATE LIMITATION:** The Borrower shall be responsible for ensuring that the Note complies with the provisions of Section 215.84, Florida Statutes, relating to maximum rate of interest including, but not limited to, the filing of a request with the State Board of Administration for authorization of the interest rate provided herein, if such interest rate is in excess of the maximum rate.

13. **CLOSING**: The Loan contemplated herein shall be closed by Bond Counsel on or before December 16, 2007.

14. **COMPLIANCE**: This Proposal shall comply with the regulations of the Comptroller of the Currency and the regulatory agencies governing the Bank.

15. **REPRESENTATIONS**: The Borrower warrants and represents that to the best of its knowledge all the documents and/or information provided the Bank prior to the date hereof are true and correct and acknowledge that the issuance of this Proposal Letter by the Bank is in reliance upon the accuracy and truth of said documents and/or information. Further, the Borrower warrants and represents that all material information known to the Borrower has been provided to the Bank and acknowledges that the Bank has relied upon this representation in the issuance of this Proposal.

16. **TERMS TO SURVIVE CLOSING**: The terms and conditions set out in this Proposal shall be construed wherever possible to apply to the continuing relationship of the Bank and to supplement the various documents to be executed at closing, and to that extent the terms and conditions of the Proposal shall survive closing.

17. **INDEMNITY**: In the event the Bank is named in any action brought against the Borrower for actions occurring during the period of the loan, Borrower shall indemnify and hold the Bank fully harmless for any and all claims arising out of or resulting from any such claim, including any and all costs of defending such action and reasonable attorney's fees incurred in connection therewith.

18. **<u>WAIVER OF RIGHT TO JURY TRIAL</u>: IF ANY LEGAL ACTION IS TAKEN WITH RESPECT TO THIS PROPOSAL OR THE LOAN DOCUMENTS OR ANY TRANSACTION DESCRIBED IN THIS PROPOSAL OR THE LOAN DOCUMENTS, THE BORROWER AND BANK WAIVE THEIR RIGHTS TO TRIAL BY JURY.**

19. **<u>ACCEPTANCE</u>**: This Proposal shall be considered null and void unless the Borrower shall acknowledge acceptance hereof by signing and returning the enclosed copy of this letter on or before December 16, 2007.

Very truly yours,

SunTrust Bank

By:__________________
Delle Joseph, CPA
First Vice President
Institutional & Government Banking

<u>ACCEPTANCE:</u> The terms and conditions of this Proposal are hereby accepted.

Dated:

City of Hialeah, Florida

By: ____________________________
As its: OMB Director and City Treasurer

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") is made and entered into as of December __, 2007, and is by and between the City of Hialeah, Florida, a Florida municipal corporation, and its successors and assigns (the "City"), and SunTrust Bank, a Georgia banking corporation, and its successors and assigns as holder of the hereinafter defined Bonds (the "Bank");

WHEREAS, the City Council of the City did, on December 11, 2007, adopt Ordinance No. ______ (the "Bond Ordinance") authorizing a loan from the Bank in the principal amount not to exceed $2,610,000 for the purpose of refunding the City's $4,400,000 Capital Improvement Revenue Bonds, Series 1993 (the "Prior Bonds"), which Prior Bonds was issued by the City on November 4, 1993 for the purpose of financing the costs of the construction of the City's fire administration building and equipment for the dispatch center and other furnishings and telephone equipment (the "Project"); and

WHEREAS, the City hereby determines that it is desirable and in the best interest of the City to enter into this Agreement whereby the City will borrow funds (the "Loan") from the Bank to be used to refund the Prior Bonds; and

WHEREAS, the obligation of the City to repay such Loan shall be evidenced by the delivery of its $_________ Capital Improvement Revenue Refunding Bonds, Series 2007 (the "Bonds") to the Bank in the principal amount of the Loan; and

WHEREAS, the Bonds shall be issued pursuant to the terms and provisions of the Bond Ordinance and this Agreement; and

WHEREAS, the execution and delivery of this Agreement have been duly authorized by the Bond Ordinance.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

ARTICLE I

DEFINITION OF TERMS

Section 1.1 Definitions. The words and terms used in this Agreement shall have the meanings as set forth in the Bond Ordinance and in the recitals above, unless otherwise defined herein. Unless the context shall otherwise require, the following words and terms as used in this Agreement shall have the following meanings:

"Act" means Part II of Chapter 166, Florida Statutes, as amended, the Charter of the City, the Code of Ordinances and other applicable provisions of law.

"Agreement" means this Loan Agreement and any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof.

"Annual Debt Service Requirement" means for a given Fiscal Year the amount required to pay the principal and interest coming due on the Bonds during that Fiscal Year.

"Bonds" means the City's Capital Improvement Revenue Refunding Bonds, Series 2007, authorized to be issued hereunder in an aggregate principal amount of $_________.

"Bond Counsel" means counsel experienced in matters relating to the validity of, and the exclusion from gross income for federal income tax purposes of interest on, obligations of states and their political subdivisions.

"Bond Payment Date" means each March 15, June 15, September 15 and December 15, commencing June 15, 2008.

"Business Day" means any day which is not a Saturday, Sunday or legal holiday or other day on which the Bank is authorized or required to close.

"Clerk" means the Clerk or any Deputy Clerk of the City.

"Code" means the Internal Revenue Code of 1986, as amended, including the applicable regulations of the Department of the Treasury (including applicable final regulations, temporary regulations and proposed regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

"Code of Ordinances" means the Code of Ordinances of the City.

"Dated Date" means the date of issuance of the Bonds.

"Event of Default" shall mean an event of default specified in Article VIII of this Agreement.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the City pursuant to general law.

"Governing Body" means the City Council of the City, or its successor in function.

"Holder" means the registered owner (or its authorized representatives) of the Bonds from time to time, initially the Bank.

"Loan" means the outstanding principal amount of the Bonds issued hereunder.

"Loan Documents" means this Agreement, the Bonds, the Bond Ordinance and all other documents, agreements, certificates, schedules, notes, statements, and opinions, however described, referenced herein or executed or delivered pursuant hereto or in connection with or arising with the Loan or the transaction contemplated by this Agreement.

"Mayor" means the Mayor of the City and such other person as may be authorized to act on his or her behalf.

"Non-Ad Valorem Revenues" means all revenues of the City derived from any source other than ad valorem taxation on real or personal property and which are legally available to make the payments required under this Agreement; but only after provision has been made by the City for the payment of all essential or legally mandated services.

"Person" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

"Pledged Revenues" means the Rescue Transportation User Fee imposed by the City pursuant to Hialeah Code Section 38-2, for rescue transport and treatment services performed by the City's fire department.

"State" means the State of Florida.

"Supplemental Ordinance" means any Ordinance of the City amending or supplementing the Bond Ordinance in accordance with the terms and provisions thereof.

Section 1.2 **Interpretation.** Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 1.3 **Titles and Headings.** The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

ARTICLE II

REPRESENTATIONS OF CITY

The City represents and warrants to the Bank that:

Section 2.1 **Powers of City.** The City is duly organized and validly existing as a municipal corporation under the laws of the State. The City has the power to borrow the amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure the Bonds in the manner contemplated hereby, and to perform and observe all the terms and conditions of the Bonds and this Agreement on its part to be performed and observed. The City may lawfully issue the Bonds in order to refund the Prior Bonds.

Section 2.2 **Authorization of Loan.** The City has, had or will have, as the case may be, full legal right, power, and authority to adopt the Bond Ordinance and to execute and deliver this Agreement, to issue, sell, and deliver the Bonds to the Bank, and to carry out and consummate all other transactions contemplated hereby and by the Loan Documents, and the

City has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The City, by the Bond Ordinance, has duly authorized the borrowing of the amount provided for in this Agreement, the execution and delivery of this Agreement, and the making and delivery of the Bonds to the Bank, and to that end the City warrants that it will take all action and will do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Bonds. The City has duly adopted the Bond Ordinance and authorized the execution, delivery, and performance of the Bonds and the Agreement and the taking of any and all other such action as may be required on the part of the City to carry out, give effect to and consummate the transactions contemplated by the Loan Documents. The Bonds has been duly authorized, executed, issued and delivered to the Bank and constitutes legal, valid and binding obligations of the City enforceable in accordance with their terms and the terms of the Bond Ordinance, and are entitled to the benefits and security of the Bond Ordinance and this Agreement. All approvals, consents, and orders of and filings with any governmental authority or agency which would constitute a condition precedent to the issuance of the Bonds or the execution and delivery of or the performance by the City of its obligations under the Loan Documents have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

Section 2.3 **Agreements.** The making and performing by the City of this Agreement will not violate any provision of the Act, or any ordinance or resolution of the City, or any regulation, order or decree of any court, and will not result in a breach of any of the terms of any agreement or instrument to which the City is a party or by which the City is bound. The Loan Documents constitute legal, valid and binding obligations of the City enforceable in accordance with their respective terms.

Section 2.4 **Litigation, Etc.** There are no actions or proceedings pending against the City or affecting the City or, to the knowledge of the City, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition of the City, or which question the validity of this Agreement, the Prior Bonds, the Bonds or any of the other Loan Documents or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby. The City is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound.

Section 2.5 **Financial Information.** The financial information regarding the City furnished to the Bank by the City in connection with the Loan is complete and accurate, and there has been no material and adverse change in the financial condition of the City from that presented in such information.

ARTICLE III

COVENANTS OF THE CITY

Section 3.1 **Affirmative Covenants.** Subject to the Bond Ordinance, the City covenants, for so long as any of the principal amount of or interest on the Bonds is outstanding and unpaid or any duty or obligation of the City hereunder or under any of the other Loan Documents remains unpaid or unperformed, as follows:

(a) **Use of Proceeds.** The City represents and warrants that the proceeds from the Prior Bonds were used only to finance the Project. The City represents and warrants that, as of the date of issuance of the Bonds, and upon the refunding of the Prior Bonds there are no other bonds or obligations of the City secured by the Pledged Revenues.

(b) **Notice of Defaults.** The City shall within ten (10) days after it acquires knowledge thereof, notify the Bank in writing upon the happening, occurrence, or existence of any Event of Default, and any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Bank with such written notice, a detailed statement by a responsible officer of the City of all relevant facts and the action being taken or proposed to be taken by the City with respect thereto.

(c) **Records.** The City agrees that any and all records of the City shall be open to inspection by the Bank or its representatives at all reasonable times at the offices of the City.

(d) **Maintain Existence.** The City shall do all things lawfully within its power to maintain its existence as a municipal corporation of the State, and shall not voluntarily dissolve.

(e) **Notice of Liabilities.** The City shall promptly inform the Bank of any actual or potential contingent liabilities or pending or threatened litigation of any amount that could reasonably be expected to have a material and adverse effect upon the financial condition of the City.

(f) **Insurance.** The City shall maintain such liability, casualty and other insurance as is reasonable and prudent for similarly situated municipal corporations of the State and shall upon the request of the Bank, provide evidence of such coverage to the Bank.

(g) **Comply with Laws.** The City is in compliance with and shall comply with all applicable federal, state and local laws and regulatory requirements.

(h) **Taxes.** The City is a tax exempt municipal corporation under the laws of the State of Florida; however, in the event the Bonds, this Agreement or any other Loan Document should be subject to the excise tax on documents or the intangible personal property tax, or any similar tax, of the State of Florida, the City shall pay such taxes or reimburse the Bank for any such taxes paid by it.

(i) **Investments.** The City shall invest only in obligations permitted by Section 218.415, Florida Statutes.

Section 3.2 **Bank Fees and Expenses.** The City hereby agrees to the fees and expenses of counsel to the Bank in connection with the issuance of the Bonds in the amount of $6,500.00, said amount to be due and payable upon the issuance of the Bonds.

Section 3.3 Registration and Exchange of notes; Persons Treated as Owners. So long as the Bonds shall remain unpaid, the City will keep books for the registration and transfer of the Bonds. The Bonds shall be transferable only upon such registration books. The City will transfer the registration of a Bond upon written request of the Bank specifying the name, address and taxpayer identification number of the transferee.

The Person in whose name the Bonds shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Bonds shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bonds to the extent of the sum or sums so paid.

Section 3.4 Payment of Principal and Interest. The City promises that it will promptly pay the principal of and interest on the Bonds at the place, on the dates and in the manner provided therein according to the true intent and meaning hereof and thereof, provided that the principal of and interest on the Bonds is secured solely as provided in Sections 3.5 and 3.6 hereof, and nothing in the Bonds or in this Agreement shall be construed as pledging any other funds or assets of the City to such payment or authorizing such payment to be made from any other source. The Bonds shall not be or constitute a general obligation or indebtedness of the City within the meaning of the Constitution of the State of Florida, but shall be payable solely from and secured in the manner and to the extent provided in Sections 3.5 and 3.6. No Holder shall ever have the right to compel the exercise of the ad valorem taxing power of the City or taxation in any form on any real or personal property to pay such Bonds or the interest thereon, nor shall any Holder be entitled to payment of such principal and interest from any other funds of the City other than the Pledged Revenues, all in the manner and to the extent herein provided.

Section 3.5 Pledge of Revenues. The City hereby pledges, assigns and grants a security interest to the Holders in the Pledged Revenues in order to secure the principal of and interest on the Bonds. The City represents and warrants to the Holder that there are no other obligations of the City currently outstanding secured by the Pledged Revenues.

Section 3.6 Covenant to Budget and Approprate. To the extent that the Pledged Revenues shall at any time be insufficient to pay the principal of and interest on the Bonds, the City hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts sufficient to pay the principal and interest due on the Bonds in accordance with it terms during such Fiscal Year. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future its Non-Ad

Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Holders a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to appropriate Non-Ad Valorem Revenue is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on Bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making available in the manner described herein Non-Ad Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under this Agreement, subject, however, in all respects to the terms of this Agreement and the restrictions of Section 166.241(3), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each Fiscal Year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City or which are legally mandated by applicable law.

Section 3.7 **Prepayment.** The City shall be entitled to prepay the Bonds prior to maturity in whole or in part at any time at a price of par plus accrued interest to the date of prepayment, upon written notice to the Holder given by the City at least five (5) Business Days prior to the date fixed for prepayment.

Section 3.8 **Business Days.** In any case where the due date of interest on or principal of the Bonds is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day, provided that credit for payments made shall not be given until the payment is actually received by the Bank.

Section 3.9 **Officers and Employees of the City Exempt from Personal Liability.** No recourse under or upon any obligation, covenant or agreement of this Agreement or the Bonds or for any claim based thereon or otherwise in respect thereof, shall be had against the Mayor or any Councilmember of the City, or any officer, agent or employee, as such, of the City past, present or future, it being expressly understood (a) that the obligation of the City under this Agreement and the Bonds is solely a corporate one, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Council, or the officers, agents, or employees, as such, of the City, or any of them, under or by reason of the obligations, covenants or agreements contained in this Loan Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every such Councilmember of the City, and every officer, agent, or employee, as such, of the City under or by reason of the obligations, covenants or agreements contained in this Loan Agreement, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Loan Agreement and the issuance of the Bonds on the part of the City.

Section 3.10 **Bonds Mutilated, Destroyed, Stolen or Lost.** In case the Bonds shall become mutilated, or be destroyed, stolen or lost, the City shall issue and deliver a new Bonds of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Bonds, or in lieu of and in substitution for the Bonds destroyed, stolen or lost and upon the Holders furnishing the City proof of ownership thereof and indemnity reasonably satisfactory to the City and complying with such other reasonable regulations and conditions as the City may prescribe and paying such expenses as the City may incur. The Bonds so surrendered shall be canceled.

Section 3.11 **Section 265 Designation of Bonds.** The reasonably anticipated amount of tax-exempt obligations (other than obligations described in clause (ii) of Section 265(b)(3)(C) of the Code) which have been or will be issued by the City during 2007 does not exceed $10,000,000. There are no entities which are subordinate to or which issue obligations on behalf of the City. The City hereby designates the Bonds as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3)(B)(i) of the Code. The City hereby covenants and agrees not to take any action or to fail to take any action if such action or failure would cause the Bonds to no longer be a "qualified tax-exempt obligation."

Section 3.12 **Tax Representations, Warranties and Covenants of the City.** Notwithstanding anything herein to the contrary, the City hereby covenants and represents that it has taken and caused to be taken and shall make and take and cause to be made and taken all actions that may be required of it for the interest on the Prior Bonds and the Bonds to be and remain excluded from the gross income of the Holders for federal income tax purposes, and that to the best of its knowledge it has not taken or permitted to be taken on its behalf, and covenants that to the best of its ability and within its control, it shall not make or take, or permit to be made or taken on its behalf, any action which, if made or taken, would adversely affect such exclusion under the provisions of the Code.

The City acknowledges that the continued exclusion of interest on the Prior Bonds and the Bonds from gross income for federal income tax purposes depends, in part, upon compliance with the arbitrage limitations imposed by Sections 103(b)(2) and 148 of the Code. The City hereby acknowledges responsibility to take all reasonable actions necessary to comply with these requirements. The City hereby represents, agrees and covenants that it has not permitted, with respect to the Prior Bonds, and shall not permit, with respect to the Bonds, at any time or times any of the proceeds of the Prior Bonds or the Bonds or other funds of the City to be intentionally used, directly or indirectly, to acquire or to replace funds which were used directly or indirectly to acquire any higher yielding investments (as defined in Section 148 of the Code), the acquisition of which would cause the Prior Bonds or the Bonds to be an arbitrage bonds for purposes of Sections 103(b)(2) and 148 of the Code. The City further agrees and covenants that it shall do and perform all acts and things necessary in order to assure that the requirements of Sections 103(b)(2) and 148 of the Code are met.

Specifically, without intending to limit in any way the generality of the foregoing, the City covenants and agrees:

(a) to pay to the United States of America at the times required pursuant to Section 148(f) of the Code, the excess of the amount earned on all non-purpose investments (as defined in Section 148(f)(6) of the Code) (other than investments attributed to an excess described in this sentence) over the amount which would have been earned if such non-purpose investments were invested at a rate equal to the yield on the Bonds, plus any income attributable to such excess (the "Rebate Amount");

(b) to maintain and retain all records pertaining to and to be responsible for making or causing to be made all determinations and calculations of the Rebate Amount and required payments of the Rebate Amount as shall be necessary to comply with the Code; and

(c) to comply with all representations and restrictions contained in any Tax Certificate executed by the City in connection with the Bonds.

The City understands that the foregoing covenants impose continuing obligations on it to comply with the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of the Code so long as such requirements are applicable.

Section 3.13 **Additional Tax Covenants of the City.** For so long as the Bonds remains outstanding, the City hereby covenants as follows:

(a) It will comply with, and timely make or cause to be made all filings required by, all effective rules, rulings or regulations promulgated by the Department of the Treasury or the Internal Revenue Service;

(b) It has not and will not use, invest, direct or permit the investment of the proceeds of the Prior Bonds or the Bonds or any investment earnings thereon in a manner that will result in the Prior Bonds or the Bonds becoming a "private activity bonds" within the meaning of Sections 141 and 145 of the Code;

(c) It has not and will not use or permit to be used more than ten percent (10%) of the proceeds of the Prior Bonds or the Bonds (including any amounts used to pay costs associated with issuing the Prior Bonds or the Bonds), including all investment income earned on such proceeds directly or indirectly, in any trade or business carried on by any person who is not the City or a state or political subdivision or instrumentality thereof as those terms are used in Section 103 of the Code (an "Exempt Person");

(d) It has not and will not use or permit the use of any portion of the proceeds of the Prior Bonds or the Bonds, including all investment income earned on such proceeds, directly or indirectly, to make or finance loans to persons who are not Exempt Persons;

(e) It has not entered into, and will not enter into, any arrangement with any person or organization (other than an Exempt Person) which provides for such person or organization to manage, operate, or provide services with respect to more than 10% of the property financed with the proceeds of the Prior Bonds or the Bonds (a "Service Contract"), unless the guidelines set forth in Revenue Procedure 97-13 (or the guidelines set forth in Revenue Procedure 93-19, to the extent applicable, or any new, revised or additional guidelines applicable to Service Contracts) (the "Guidelines"), are satisfied, except to the extent it obtains a private letter ruling from the Internal Revenue Service or an opinion of nationally recognized Bond Counsel which allows for a variation from the Guidelines;

(f) It has not and will not cause the Prior Bonds or the Bonds to be treated as "federally guaranteed" for purposes of Section 149 of the Code, as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to "federally guaranteed" obligations described in Section 149 of the Code. For purposes of this paragraph, the Prior Bonds or the Bonds shall be treated as "federally guaranteed" if (i) all or any portion of the principal or interest is or will be guaranteed directly or indirectly by the United States of America or any agency or instrumentality thereof, or (ii) 5% or more of the proceeds of the Prior Bonds or the Bonds was or will be (A) used in making loans the payment of principal or interest with respect to which is to be guaranteed in whole or in part by the United States of America or any agency or instrumentality thereof, or (B) invested directly or indirectly in federally insured deposits or accounts, and (iii) such guarantee is not described in Section 149(b)(3) of the Code; and

(g) It will comply with the information reporting requirements of Section 149(e)(2) of the Code.

The terms "debt service," "gross proceeds," "net proceeds," "proceeds," and "yield" have the meanings assigned to them for purposes of Section 148 of the Code.

ARTICLE IV

CONDITIONS OF LENDING

Section 4.1 **<u>Conditions of Lending</u>.** The obligations of the Bank to lend hereunder are subject to the following conditions precedent:

(a) **<u>Representations and Warranties</u>.** The representations and warranties set forth in the Loan Documents are and shall be true and correct to the best of the City's knowledge on and as of the date hereof.

(b) **<u>No Default</u>.** On the date hereof the City shall be in compliance with all the terms and provisions set forth in the Loan Documents on its part to be observed or performed, and no Event of Default nor any event that, upon notice or lapse of time or both, would constitute such an Event of Default, shall have occurred and be continuing at such time.

(c) **<u>Supporting Documents</u>.** On or prior to the date hereof, the Bank shall have received the following supporting documents, all of which shall be satisfactory in form and substance to the Bank (such satisfaction to be evidenced by the purchase of the Bonds by the Bank):

(i) The opinion of the City Attorney regarding the due authorization, execution, delivery, validity and enforceability of this Agreement and the Bonds, the City's power to incur the debt evidenced by the Bonds and the due adoption of the Bond Ordinance;

(ii) The opinion of Bond Counsel to the effect that, (A) the interest on the Bonds is excluded from gross income for federal income tax purposes, (B) the Bonds are not an item of tax preference under Section 57 of the Code, (C) the Bonds are qualified tax-exempt obligations under Section 265(b)(3) of the Code and (D) the Bonds and the income thereon are exempt from the State excise tax on documents and intangible personal property tax; and

(iii) Such additional supporting documents as the Bank may reasonably request.

ARTICLE V

THE LOAN; CITY'S OBLIGATION; DESCRIPTION AND PAYMENT TERMS

Section 5.1 **<u>The Loan.</u>** The Bank hereby agrees to loan to the City the amount of $_________ to be evidenced by the Bonds, to provide funds to refund the Prior Bonds upon the terms and conditions set forth in the Bond Ordinance and in this Agreement. The City agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in the Loan Documents.

Section 5.2 **<u>Description and Payment Terms of the Bonds</u>.** To evidence the Loan, the City shall issue and deliver to the Bank the Bonds in the form attached hereto as Exhibit "A".

ARTICLE VI

CREATION AND USE OF FUNDS AND ACCOUNTS

Section 6.1 **<u>Bond Fund</u>.** There is hereby created a fund, entitled "City of Hialeah, Florida, Capital Improvement Revenue Refunding Bonds, Series 2007 Bond Fund" (the "Bond Fund"). There shall be deposited into the Bond Fund on each Bond Payment Date sufficient amounts of Pledged Revenues and Non-Ad Valorem Revenues as specified in Sections 3.5 and 3.6 hereof which, together with the amounts already on deposit therein, will enable the City to pay the principal of and interest on the Bonds on each Bond Payment Date. Moneys in the Bond Fund shall be applied on each Bond Payment Date to the payment of principal of and interest on the Bonds coming due on each such date.

Section 6.2 **<u>Funds</u>.** Each of the funds and accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds and accounts respectively. The money in such funds and accounts shall be continuously secured in the same manner as deposits of City funds are authorized to be secured by the laws of the State of Florida.

The designation and establishment of the funds and accounts in and by this Agreement shall not be construed to require the establishment of any completely independent, self-balancing funds, as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues and assets of the City for the purposes herein provided and to establish certain priorities for application of such revenues and assets.

Section 6.3 **<u>Rebate Fund and Rebate Covenants</u>.** There is hereby created and established a fund to be held by the City, designated the "City of Hialeah Capital Improvement Revenue Refunding Bonds, Series 2007 Rebate Fund" (the "Rebate Fund"). The Rebate Fund shall be held by the City separate and apart from all other funds and accounts held by the City under this Agreement and from all other moneys of the City.

Notwithstanding anything in this Agreement to the contrary, the City shall transfer to the Rebate Fund the amounts required to be transferred in order to comply with the Tax Certificate or the Rebate Covenants, if any, attached as an Exhibit to the Tax Certificate to be delivered by the City on the date of delivery of the Bonds (the "Rebate Covenants"), when such amounts are so required to be transferred. The City shall make or cause to be made payments from the Rebate Fund of amounts required to be deposited therein to the United States of America in the amounts and at the times required by the Rebate Covenants. The City covenants for the benefit of the Holders that it will comply with the Rebate Covenants. The Rebate Fund, together with all moneys and securities from time to time held therein and all investment earnings derived therefrom, shall be excluded from the pledge and lien of this Agreement. The City shall not be required to comply with the requirements of this Section 6.3 in the event that the City obtains an opinion of Bond Counsel that (i) such compliance is not required in order to maintain the federal income tax exemption of interest on the Bonds and/or (ii) compliance with some other requirement is necessary to maintain the federal income tax exemption of interest on the Bonds.

Section 6.4 <u>**Custody Account.**</u> On the date of issuance of the Bonds, the Bank agrees to hold all of the proceeds of the Bonds, together with $____________ transferred to the Bank by the City representing moneys held in the debt service reserve fund for the Prior Bonds (collectively, the "Deposit Amount"), in an irrevocable and segregated custody account (the "Custody Account") under the Custody Agreement, dated as of ____________, between the City and the Bank (the "Custody Agreement").

Within one day after the date hereof, the Bank shall purchase direct obligations of the United States of America maturing on or prior to, but as close as possible to, January __, 2008 (the redemption date of the Prior Bonds, hereinafter referred to as the "Redemption Date"), and in an aggregate principal amount as close as possible to the Deposit Amount (the "Securities"). Any of the Deposit Amount not used to purchase the Securities shall be held uninvested. The Bank shall withdraw from the Custody Account not later than the Redemption Date, the amount of $_________, being the amount necessary to pay the principal of and interest to become due on the Prior Bonds on the Redemption Date, and shall transfer such amount in immediately available funds to U.S. Bank National Association as paying agent for the Prior Bonds (the "Paying Agent"). If, for any reason, the amounts on deposit in the Custody Account are insufficient to pay the principal of and accrued interest on the Prior Bonds on the Redemption Date, the City covenants and agrees to immediately deposit with the Paying Agent the balance needed for such purposes. Any moneys remaining in the Custody Account after payment of the Prior Bonds as provided in this section shall be immediately transferred to, or applied as directed by, the City.

It is agreed by the City and the Bank that the owners of the Prior Bonds shall have an express lien on all moneys and the principal of and interest due or to become due on the Government Obligations on deposit in the Custody Account until the same are used and applied in accordance with this Agreement.

The Bank shall not be liable for any loss resulting from any investment made pursuant to the terms and provisions of this section except for any loss resulting from the Bank's gross negligence, willful misconduct or default. The liability of the Bank for the payment of the principal of and interest to become due on the Prior Bonds shall be limited to the amounts deposited pursuant to this section and the earnings thereon when invested in accordance with this section. The Bank shall have no lien whatsoever upon any of the moneys in the Custody Account for the payment of fees and expenses for services rendered by the Bank under the Custody Agreement, nor for the payment of the principal of and interest due on the Bonds as a Holder of the Bonds.

ARTICLE VII

SPECIAL COVENANTS

Section 7.1 **Financial Statements.** The City shall, upon receipt by the City or within one hundred eighty (180) days of each Fiscal Year end, whichever is sooner, provide the Holders with a printed copy of its Annual Financial Statement, and a certificate of its Mayor or Director of the Office of Management and Budget in form and substance satisfactory to the Holders evidencing compliance with the covenant set forth in Section 7.2 below. The City shall also provide to the Holders, within thirty (30) days of its adoption, its current year operating budget, and upon request, any other financial information reasonably requested by such Holders.

Section 7.2 **Additional Debt**. The City covenants and agrees that it will not issue additional Debt Obligations secured by the Pledged Revenues unless the amount of Pledged Revenues collected by the City during the previous twelve (12) months is equal to at least 150% of Maximum Annual Debt Service. For purposes of this paragraph,

(a) "Maximum Annual Debt Service" shall mean the maximum amount of principal and interest required in the then current or any future fiscal year to pay all Debt Obligations; and

(b) "Debt Obligations" shall mean debt service on debt obligations of the City, including the Bonds and the proposed new Debt Obligation, which are secured by or payable from the Pledged Revenues.

For purposes of calculating Maximum Annual Debt Service, the interest rate to be assumed for Debt Obligations bearing interest at a variable rate shall be equal the average rate of interest paid by the City with respect to such Debt Obligations during the twelve (12) months preceding the date of calculation, or, if the Debt Obligations were not outstanding during all of the preceding twelve (12) months, the current rate, or for the proposed Debt Obligation, the proposed initial variable rate.

ARTICLE VIII

EVENTS OF DEFAULT

Section 8.1 **General.** An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The City shall fail to make any payment of the principal of or interest on the Bonds after the same shall become due and payable, whether by maturity, by acceleration at the discretion of the Bank upon the occurrence of an Event of Default as provided for in Section 8.2, or otherwise; or

(b) The City shall default in the performance of or compliance with any term or covenant contained in the Loan Documents, other than a term or covenant a default in the performance of which or noncompliance with which is dealt with in Section 8.1(a) or (c) through (h) hereof, which default or non-compliance shall continue and not be cured within thirty (30) days after (i) notice thereof to the City by the Bank; or (ii) the Bank is notified of such noncompliance or should have been so notified pursuant to the provisions of Section 3.1(b) of this Agreement, whichever is earlier; or

(c) Any representation or warranty made in writing by or on behalf of the City in any Loan Document shall prove to have been false or incorrect in any material respect on the date made or reaffirmed; or

(d) The City admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

(e) The City is adjudged insolvent by a court of competent jurisdiction, or it is adjudged a bankrupt on a petition in bankruptcy filed by or against the City, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(f) The City shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State of Florida; or

(g) The City shall default in the due and punctual payment or performance of covenants under any obligation for the payment of money to the Bank or any other subsidiary or affiliate of the Bank; or

(h) A judgment or order shall be rendered against the City for the payment of money in excess of $100,000 which is not covered by insurance and such judgment or order shall continue unsatisfied or unstayed for a period of more than 30 days, unless such judgment is subject to a Claims Bill or during the pendency of an appeal if such judgment or order is appealed.

Section 8.2 <u>**Effect of Event of Default.**</u> Except as otherwise provided in the Bonds, immediately and with notice to the City, upon the occurrence of any Event of Default, the Bank may declare all obligations of the City under the Loan Documents to be immediately due and payable without further action of any kind and upon such declaration the Bonds and the interest accrued thereon shall become immediately due and payable. In addition, and regardless whether such declaration is or is not made, the Bank may also seek enforcement of and exercise all remedies available to it under the Bond Ordinance, the Act and any other applicable law.

Should the City default in any obligation created by this Agreement or the Bonds, the Bank may, in addition to any other remedies set forth in this Agreement or the Bonds, either at law or in equity, by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted or contained in this Agreement, and may enforce and compel the performance of all duties required by this Agreement or by any applicable statutes to be performed by the City or by any officer thereof.

ARTICLE IX

MISCELLANEOUS

Section 9.1 **<u>No Waiver; Cumulative Remedies</u>.** No failure or delay on the part of the Bank or the City in exercising any right, power, remedy hereunder, or under the Bonds or other Loan Documents shall operate as a waiver of the City's or Bank's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 9.2 **<u>Amendments, Changes or Modifications to the Agreement</u>.** This Agreement shall not be amended, changed or modified except by written instrument between the Bank and the City. The City agrees to pay all of the Bank's costs and reasonable attorneys' fees incurred in modifying and/or amending this Agreement at the City's request or behest.

Section 9.3 **<u>Counterparts</u>.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 9.4 **<u>Severability</u>.** If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof, and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 9.5 **<u>Term of Agreement</u>.** Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the City in connection herewith shall be in full force and effect from the date hereof and shall continue in effect until as long as the Bonds is outstanding.

Section 9.6 **<u>Notices</u>.** All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service: and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case notice shall be sent to:

If to the City:	Mayor Julio Robaina City of Hialeah 501 Palm Avenue Hialeah, Florida 33010 Fax Number: 305-883-5932
If to the Bank:	SunTrust Bank 777 Brickell Avenue, 4th Floor Miami, Florida 33131 Attention: Institutional and Government Banking Fax Number: 305-579-7133

or to such other address as either party may have specified in writing to the other using the procedures specified above in this Section 9.6.

Section 9.7 **Applicable Law.** This Agreement, and each of the Loan Documents and transactions contemplated herein, shall be construed pursuant to and governed by the substantive laws of the State.

Section 9.8 **Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The City shall have no rights to assign any of their rights or obligations hereunder without the prior written consent of the Bank.

Section 9.9 **Conflict.** In the event any conflict arises between the terms of this Agreement and the terms of any other Loan Document, the terms of this Agreement shall govern in all instances of such conflict.

Section 9.10 **No Third Party Beneficiaries.** It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and no person not a party hereto shall have any rights or privileges hereunder.

Section 9.11 **Attorneys Fees.** To the extent legally permissible, the City and the Bank agree that in any suit, action or proceeding brought in connection with this Agreement, the Bonds, or the Bond Ordinance (including any appeal(s)), the prevailing party shall be entitled to recover costs and attorneys' fees from the other party.

Section 9.12 **Entire Agreement.** Except as otherwise expressly provided, this Agreement and the other Loan Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 9.13 **Further Assurances.** The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

Section 9.14 **Waiver of Jury Trial.** THE CITY AND THE BANK IRREVOCABLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CONTROVERSY OR CLAIM BETWEEN THEM, WHETHER ARISING IN CONTRACT, TORT OR BY STATUTE, THAT ARISES OUT OF OR RELATES TO THIS AGREEMENT, THE BONDS OR THE BONDS RESOLUTION. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY AND THE BANK TO ENTER INTO THIS AGREEMENT.

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

CITY OF HIALEAH, FLORIDA

[SEAL]

By: ___________________________________
Julio Robaina, Mayor

ATTEST:

By: ____________________________
Rafael E. Grando, City Clerk

Approved as to form and legal sufficiency:

By: ____________________________
William M. Grodnick
City Attorney

SUNTRUST BANK

By: ___________________________________
Delle Joseph, Vice President

EXHIBIT A

December __, 2007

$_________

CITY OF HIALEAH, FLORIDA

CAPITAL IMPROVEMENT REVENUE REFUNDING BOND, SERIES 2007

KNOW ALL MEN BY THESE PRESENTS that the City of Hialeah, Florida (the "City"), a municipal corporation created and existing pursuant to the Constitution and the laws of the State of Florida, for value received, promises to pay from the sources hereinafter provided, to the order of SunTrust Bank, or registered assigns (hereinafter, the "Bank" or the "Holder"), the principal sum of $_________, together with interest on the principal balance outstanding at the rate of 4.33% per annum (subject to adjustment as hereinafter provided), based upon a year of 360 days for the actual number of days elapsed.

Principal of and interest on this Bond are payable in lawful money of the United States of America at such place as the Bank may designate to the City.

For purposes of this Bond, the following definitions shall apply:

(1) "Code" means the Internal Revenue Code of 1986, as amended;

(2) "Cost of Funds" means 100 multiplied by a fraction, the numerator of which is equal to the total interest expense of SunTrust Bank for its immediately preceding tax year and the denominator of which is equal to the average total assets of SunTrust Bank for such tax year, but not to exceed the cost of Fed Funds.

(3) "Fully Taxable Equivalent" means the rate of interest on the Bonds multiplied by 1.49, expressed as a number and not as a percentage.

(4) "Maximum Corporate Tax Rate" means the maximum Federal income tax rate applicable to corporations, presently 35%.

(5) "Preference Reduction Rate" means the percentage reduction to be applied to the amount allowable as a deduction under Chapter 1 of the Code with respect to any financial institution preference item (as such term is defined in Section 291(e) of the Code), presently 20%. If this Bond is not or ceases to be a "qualified tax-exempt obligation" as defined in Section 265(b) of the Code, the Preference Reduction Rate shall be deemed to increase from twenty percent (20%) to one hundred percent (100%).

(6) "TEFRA Adjustment" means an adjustment equal to the product of the Cost of Funds multiplied by the applicable Maximum Corporate Tax Rate multiplied by the applicable Preference Reduction Rate.

If for any reason the interest on this Bond becomes includable in the gross income of the holder of this Bond for Federal income tax purposes (an "Event of Taxability"), this Bond shall bear interest from the earliest effective date of such Event of Taxability at a rate per annum equal to 6.4517% per annum. In addition to the foregoing, the City shall pay any additions to tax, penalties and interest, and any arrears in interest imposed upon the holder of this Bond on account of an Event of Taxability. All such additional interest, additions to tax and penalties shall be paid on the next succeeding Bond Payment Date following the date the Holder was advised of such Event of Taxability.

No Event of Taxability shall be deemed to occur unless the City has been given timely written notice of such occurrence by the Holder of this Bond and, to the extent permitted by law, an opportunity to participate in and seek, at the City's own expense, a final administrative determination by the Internal Revenue Service or determination by a court of competent jurisdiction (from which no further right of appeal exists) as to the occurrence of such Event of Taxability; provided that the City, at its own expense, delivers to the holder of this Bond an opinion of Bond Counsel acceptable to such holder to the effect that such appeal or action for judicial or administrative review is not without merit and there is a reasonable possibility that the judgment, order, ruling or decision from which such appeal or action for judicial or administrative review is taken will be reversed, vacated or otherwise set aside.

The interest rate borne by this Bond shall also be adjusted automatically as of the effective date of any change in the Maximum Corporate Tax Rate or in the Preference Reduction Rate, to the product obtained by multiplying the rate of interest on the Bonds by a fraction, the numerator of which is equal to the sum of (i) the product of the Fully Taxable Equivalent times 1 minus the Maximum Corporate Tax Rate in effect as of the date of adjustment, plus (ii) the TEFRA Adjustment in effect as of the date of adjustment, and the denominator of which is equal to the sum of (i) the product of the Fully Taxable Equivalent times 0.65, plus (ii) the TEFRA Adjustment in effect on the date of closing of the Bonds.

A certificate of the Holder as to any such additional amount or amounts, in the absence of manifest error, shall be final and conclusive. In determining such amount, the Holder may use any reasonable averaging and attribution methods.

The principal on this Bond shall be due and payable on March 15, June 15, September 15 and December 15 of each year (each, a "Bond Payment Date"), beginning June 15, 2008, through and including December 15, 2018 (the "Maturity Date"), in the amounts set forth on the payment schedule attached hereto.

Interest on this Bond shall be due and payable on each Bond Payment Date beginning on June 15, 2008 until the Maturity Date. The entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Maturity Date. All payments by the City pursuant to this Bond shall apply first to accrued interest, then to other charges due the Bank, and the balance thereof shall apply to the principal sum due.

The City may prepay amounts owing under the Bonds in whole or in part at any time at a price of par plus accrued interest to the date of prepayment, upon written notice to the Holder given by the City at least five (5) Business Days prior to the date fixed for prepayment. Such prepayment notice shall specify the amount of the prepayment which is to be applied.

Interest at the lesser of 12% per annum or the maximum lawful rate per annum shall be payable on the entire principal balance owing hereunder from and after the occurrence of and during the continuation of an Event of Default under the Loan Agreement, irrespective of a declaration of maturity.

The City to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

This Bond is issued pursuant to Ordinance No. _____ duly enacted by the City on December 11, 2007, which became effective on December __, 2007, as from time to time amended and supplemented (herein referred to as the "Bond Ordinance"), and a Loan Agreement, dated of even date herewith, between the City and the Bank (the "Loan Agreement") and is subject to all the terms and conditions of the Loan Agreement. All terms, conditions and provisions of the Loan Agreement are by this reference thereto incorporated herein as a part of this Bond. Terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

In the Loan Agreement, the City has pledged, assigned and granted a security interest to the Holder in the Pledged Revenues (as defined in the Loan Agreement) in order to secure the principal of and interest on the Bonds.

In addition, the City has covenanted and agreed in the Loan Agreement to appropriate in its annual budget, by amendment, if necessary, from Non-Ad Valorem Revenues lawfully available in each Fiscal Year, amounts sufficient to pay the principal and interest due on the Note in accordance with its terms during such Fiscal Year. "Non-Ad Valorem Revenues" means all revenues of the City derived from any source other than ad valorem taxation on real or personal property which the City derived from any source other than ad valorem taxation on real or personal property which are legally available to make the payments required under the Loan Agreement; but only after provision has been made by the City for the payment of all essential or legally mandated services. Such covenant and agreement on the part of the City to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing covenant of the City, the City does not covenant to maintain any services or programs, now provided or maintained by the City, which generate Non-Ad Valorem Revenues.

Such covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Revenues, nor does it preclude the City from pledging in the future its Non-Ad Valorem Revenues, nor does it require the City to levy and collect any particular Non-Ad Valorem Revenues, nor does it give the Note Holder a prior claim on the Non-Ad Valorem Revenues as opposed to claims of general creditors of the City. Such covenant to appropriate Non-Ad Valorem Revenues is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into (including the payment of debt service on Note and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated in the Loan Agreement shall have the effect of making available in the manner described herein Non-Ad Valorem Revenues and placing on the City a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations under the Loan Agreement, subject, however, in all respects to the terms of the Loan Agreement and the restrictions of Section 166.241(3), Florida Statutes, which provides, in part, that the governing body of each municipality make appropriations for each Fiscal Year which, in any one year, shall not exceed the amount to be received from taxation or other revenue sources; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the City or which are legally mandated by applicable law.

Reference is hereby made to the Loan Agreement for the provisions, among others, relating to the terms, lien and security of the Bonds, the custody and application of the proceeds of the Bonds, the rights and remedies of the Holders of the Bonds, and the extent of and limitations on the City's rights, duties and obligations, to all of which provisions the Holder hereof for himself and his successors in interest assents by acceptance of this Bond.

THIS BOND SHALL NOT BE DEEMED TO CONSTITUTE A GENERAL DEBT OR A PLEDGE OF THE FAITH AND CREDIT OF THE CITY, OR A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, LEGISLATIVE OR CHARTER PROVISION OR LIMITATION, AND IT IS EXPRESSLY AGREED BY THE HOLDER OF THIS BOND THAT SUCH HOLDER SHALL NEVER HAVE THE RIGHT, DIRECTLY OR INDIRECTLY, TO REQUIRE OR COMPEL THE EXERCISE OF THE AD VALOREM TAXING POWER OF THE CITY OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE OF FLORIDA OR TAXATION IN ANY FORM ON ANY REAL OR PERSONAL PROPERTY FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND OR FOR THE PAYMENT OF ANY OTHER AMOUNTS PROVIDED FOR IN THE LOAN AGREEMENT.

It is further agreed between the City and the Holder of this Bond that neither the members of the Governing Body of the City nor its officers, agents and/or employees nor any person executing the Bonds shall be liable personally on the Bonds by reason of its issuance.

This Bond may be exchanged or transferred by the Bank hereof but only upon the registration books maintained by the City and in the manner provided in the Loan Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond is in full compliance with and does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Hialeah, Florida has caused this Bond to be executed in its name by the manual signature of its Mayor, and attested by the manual signature of its Clerk and its corporate seal or a facsimile thereof affixed hereto, all as of this ____ day of December, 2007.

CITY OF HIALEAH, FLORIDA

By: ______________________________
Mayor Julio Robaina

[SEAL]

ATTEST:

By:___________________________
Rafael E. Grando, City Clerk

Approved as to form and legal sufficiency:

By:___________________________
William M. Grodnick
City Attorney

{M1666087_4}

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto ______________________________ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints ______________________________ attorney to transfer the within Bonds in the books kept by the City for the registration thereof, with full power of substitution in the premises.

Date: ____________________

____

____

SOCIAL SECURITY NUMBER OR FEDERAL IDENTIFICATION NUMBER OF ASSIGNEE

NOTICE: The signature of this assignment must correspond with the name as it appears upon the within Bond in every particulate, or any change whatever.

[Form of Abbreviations]

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to the applicable laws or regulations.

TEN COM - as tenants in common
TEN ENT - as tenants by the entireties
JT TEN - as joint tenants with the right of survivorship and not as tenants in common
UNIFORM TRANS MIN ACT - ________ Custodian for __________(Cust.) (Minor) under Uniform Transfers to Minors Act of ________________ (State).

Additional abbreviations may also be used though not in the above list.

Name and address of assignee for payment and notice purposes

Notice: ____________________

____

____

Payment: ____________________

____

____

Date: ____________________

Assignee: ____________________
By: ____________________
Title: ____________________